

Working arrangements concerning participation of the National Regulatory Authority of Ukraine in the Body of European Regulators for Electronic Communications and the Agency for Support for BEREC

These Working Arrangements (“WA”) concern the participation of

The National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and the Provision of Postal Services (NCEC) (“the Participant NRA”)

in the work of

The Body of European Regulators for Electronic Communications (“BEREC”) and the Agency for Support for BEREC (“BEREC Office”)

1. Introduction

The Body of European Regulators for Electronic Communications (BEREC) and the BEREC Office facilitate the consistent application of the electronic communications framework throughout the European Union in accordance with Regulation (EU) 2018/1971¹ (“the BEREC Regulation”).

The Participant NRA is the regulatory authority of Ukraine with primary responsibility in the field of electronic communications.

Pursuant to Article 35(2) of the BEREC Regulation, the Board of Regulators, the Working Groups and the Management Board are to be open to the participation of regulatory authorities of third countries with primary responsibility in the field of electronic communications, where those third countries have entered into agreements with the Union to that effect.

The Union and Ukraine concluded the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part² (“the Association Agreement”), which is an agreement within the meaning of Article 35(2) of the BEREC

¹ Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (OJ L 321, 17.12.2018, p. 1–35).

² OJ L 161, 29.5.2014, p. 3.

Regulation. In particular, pursuant to Article 124 of the Association Agreement Ukraine has committed to ensure that its current and future laws on electronic communications gradually become compatible with the Union *acquis* featured in Annex XVII to the Association Agreement; that Annex has been updated³.

In particular, the BEREC Regulation has been added to Appendix XVII-3 (Rules applicable to telecommunications services). The amended Annex provides, *inter alia*, that ‘the national regulatory authority of Ukraine with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services shall participate fully in the work of the Board of Regulators of BEREC, the working groups of BEREC and the Management Board of the BEREC Office’; the national regulatory authority of Ukraine shall have the same rights and obligations as the national regulatory authorities of the EU Member States, except for the right to vote and for the Chairmanship of the Board of Regulators and of the Management Board.

Pursuant to Article 392 of the Association Agreement, the Parties shall cooperate “with the aim of developing a comprehensive regulatory framework and ensure efficient functioning of (...) the electronic communication markets”, while pursuant to Article 394(1) of the Association Agreement, they “shall promote gradual approximation to the EU law and regulatory framework” in this area. In addition, Article 393 of the Association Agreement provides that “the Parties shall promote cooperation between Ukraine's national regulator in the field of communications and the national regulators of the EU”.

It is clear from the object and purpose of the provisions of the Association Agreement and its Appendix XVII-3 that the Union and Ukraine commit to regulatory cooperation with the aim of approximation of Ukraine's laws on electronic communications to the Union *acquis*, for which BEREC plays an important role. It is also clear that participation of the national regulatory authority of Ukraine to the work of BEREC and the BEREC Office would further facilitate the process.

Given the interest of the Union in strengthening cooperation with Ukraine and fostering the adoption by Ukraine of the Union regulatory regime for electronic communications, the Board of Regulators of BEREC and the Management Board of the BEREC Office have proposed to establish working arrangements for the participation of the regulatory authority of Ukraine in the Board of Regulators and working groups of BEREC and the Management Board of the BEREC Office.

³ Decision N° 1/2021 of the EU-Ukraine Association Committee in Trade Configuration of 22 November 2021 amending Appendix XVII-3 (Rules applicable to telecommunication services), Appendix XVII-4 (Rules applicable to postal and courier services) and Appendix XVII-5 (Rules applicable to international maritime transport) to Annex XVII to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part [2021/2219] (OJ L 447, 14.12.2021, p. 23); Decision N° 1/2023 of the EU-Ukraine Association Committee in Trade Configuration of 24 April 2023 modifying Appendix XVII-3 (Rules applicable to telecommunication services) of Annex XVII to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part [2023/930] (OJ L 123, 8.5.2023, p. 38-42).

Article 35(2) of the BEREC Regulation provides that working arrangements shall be developed specifying, in particular, the nature, extent and manner in which the regulatory authorities of third countries participate without the right to vote in the work of BEREC and of the BEREC Office, including provisions relating to participation in the initiatives carried out by BEREC, financial contributions and staff to the BEREC Office. Article 35(1) of the BEREC Regulation provides that working arrangements shall not create legal obligations. Those working arrangements shall not be considered as an international agreement (treaty) within the meaning of the 1969 Vienna Convention on the Law of Treaties⁴.

In accordance with Article 35(1) of the BEREC Regulation⁵, the European Commission provided its approval⁶ on 19 January 2024,

2. Purpose

Through these working arrangements (WA), the Sides thereto intend to strengthen cooperation, in particular, in the area of electronic communications networks and electronic communications services, in order to further extend the consistent implementation of the regulatory framework for electronic communications.

The present WA are without prejudice to the Association Agreement, the BEREC Regulation, the respective Rules of Procedure of the BEREC Board of Regulators and of the BEREC Office Management Board. These WA do not create any legally binding or financial obligations, and shall not be interpreted as having such intention or effect.

3. Working arrangements for participation in BEREC and the BEREC Office

The Participant NRA should be able to participate, and intends to participate, in the work of the BEREC Board of Regulators, the Contact Network and the Working Groups, and the BEREC Office Management Board, in accordance with the relevant provisions of the BEREC Regulation, and the Rules of Procedure of the Board of Regulators and the BEREC Office Management Board.

The BEREC Rules of Procedure and the Rules of Procedure of the Management Board set out in greater detail the methods of participation.

The Participant NRA should have access to the BEREC internal website (intranet) for the electronic exchange of documents.

Except as provided below, the nature, extent and manner of the participation by the Participant NRA in the work of BEREC, the BEREC Working Groups and the BEREC Office (including

⁴ The Vienna Convention on the Law of Treaties signed in Vienna on 23 May 1969.

⁵ As explained in Recital 20 of the BEREC Regulation: "The Commission should ensure that the necessary working arrangements are consistent with Union policy and priorities, and that BEREC operates within its mandate and the existing institutional framework and is not seen as representing the Union position to an outside audience or as committing the Union to international obligations."

⁶ C(2024)381

the Management Board) and in initiatives carried out by BEREC should be the same as the nature, manner and extent of the participation by the Members of BEREC:

- a. The Participant NRA should not cast any vote in the BEREC Board of Regulators or BEREC Office Management Board (whether the vote is taken at a meeting or by electronic means or otherwise);
- b. While the Participant NRA should not provide a candidate for Chair or Vice-Chair of the BEREC Board of Regulators, it should be able to participate in the selection of the Mini Board member representing third-country national regulatory authorities in accordance with the rules of procedures of the Board of Regulators, and, upon decision of the Board of Regulators, to speak and act on behalf of BEREC;
- c. The Participant NRA should not participate in any manner which is reserved to Members of BEREC by the BEREC Regulation or any Rules of Procedure or Decision adopted by the BEREC Board of Regulators or the BEREC Office Management Board.

4. Terms of Reference

The Terms of Reference for the participation of the Participant NRA are set out in the Annex.

5. Effective period

The working arrangements are to come into operation on the day that they are adopted by BEREC and the BEREC Office Management Board and shall replace the working arrangements of 9 December 2022⁷.

BEREC, the BEREC Office and the Participant NRA may discontinue these working arrangements at any time and intend to inform the chair of the Board and of the Management Board or the head of the Participant NRA in writing thereof, as applicable. The BEREC Office Director and the Commission should be informed of this notice by the BEREC Chair. These Working Arrangements would be discontinued if the Commission gives notice to the Sides of these working arrangements that there is no longer any agreement between the EU and Ukraine within the meaning of Article 35(2) of the BEREC Regulation.

⁷ BoR (22) 206.

Done at: 26/03/2024

On behalf of NCEC:

Mr Oleksandr Zhyvotovskiy,

Chairman of the National Commission for the State Regulation of Electronic Communications,
Radio Frequency Spectrum and the Provision of Postal Services (NCEC)

Date: 26/03/2024

On behalf of BEREC:

Mr Tonko Obuljen,

Chair of the Body of European Regulators for
Electronic Communications (BEREC)

Date: 26/03/2024

On behalf of BEREC Office:

Mr László Ignéczi,

Director of the Agency for Support for BEREC
(BEREC Office)

Date: 26/03/2024

ANNEX

TERMS OF REFERENCE

I. Participation in the BEREC Board of Regulators

1. The Participant NRA should be able to participate, and intends to participate in the work of the BEREC Board of Regulators (BoR).
2. The Participant NRA should appoint a representative to participate in the deliberations of the BoR from among the head of the Participant NRA, a member of its collegiate body or the replacement of either of them.
3. The Participant NRA should also appoint an alternate, who would replace the representative in their absence. The alternate should be appointed from among the head of the Participant NRA, a member of its collegiate body, the replacement of either of them, or the staff of the Participant NRA.
4. The representative of the Participant NRA and the alternate should be appointed in light of their knowledge in the field of electronic communications, taking into account relevant managerial, administrative and budgetary skills. In order to ensure a maximum benefit from their participation the Participant NRA should make efforts to limit the turnover of its representatives and, where possible, also of its alternates.
5. The Participant NRA should be in a position to express an opinion in all discussions, whether they are held in a meeting of the BEREC BoR or by any other means. Such opinion should be duly recorded in the minutes, according to the rules and working practices of the BoR.
6. The name of the representative of the Participant NRA and of the alternate should be included in the list of members of the BoR published in accordance with Article 7(5) of Regulation (EU) 2018/1971 of the European Parliament and of the Council⁸.
7. When participating in the work of the BoR, the representative of the Participant NRA and the alternate shall neither seek nor take instructions from any government, institution, person or body.

II. Participation in the Working Groups

1. The Participant NRA should be able to nominate, and intends to nominate experts to participate in the Working Groups of BEREC.

⁸ Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (OJ L 321, 17.12.2018, p. 1).

2. Such experts should be able to participate in all activities of the Working Groups, according to the rules and working practices of BEREC. They should be able to express an opinion in all exchanges, whether they are held in a meeting of the Working Groups or by any other means.

III. Participation in the Management Board of the BEREC Office

1. The Participant NRA should be able to participate, and intends to participate in the work of the Management Board of the BEREC Office (MB).
2. The Participant NRA should appoint the person appointed as representative in the BoR to participate in the work of the MB or a person other than the representative in the BoR from among the head of the Participant NRA, a member of its collegiate body or the replacement of either of them.
3. The Participant NRA should also appoint as alternate the person appointed as alternate of the representative in the BoR or another person, from among the head of the Participant NRA, a member of its collegiate body, the replacement of either of them, or the staff of the Participant NRA, who would replace the representative in their absence.
4. The Participant NRA should be in a position to express an opinion in all discussions, whether they are held in a meeting of the MB or by any other means. Such opinion should be duly recorded in the minutes, according to the rules and working practices of the MB.
5. The name of the representative of the Participant NRA and of the alternate should be included in the list of members of the MB published in accordance with Article 15(4) of Regulation (EU) 2018/1971.
6. When participating in the work of the MB, the representative of the Participant NRA and the alternate shall neither seek nor take instructions from any government, institution, person or body.

IV. Declarations of Interest

1. The representatives of the Participant NRA to the BoR and the MB and their alternates shall each make a written declaration indicating their commitments and the absence or presence of any direct or indirect interests that might be considered to prejudice their independence.
2. These declarations shall be made at the time of taking up responsibilities and shall be published. They shall be accurate and complete, and shall be updated where there is a risk of there being any direct or indirect interest that might be considered to prejudice the independence of the person making the declaration.

V. Staffing

1. The Participant NRA should be able to provide staff to the BEREC Office in the same way as Members of BEREC may do so.

VI. Financial contribution of the Participant NRA to the BEREC Office

1. Operational arrangements related to the determination and collection of financial contributions for participation in BEREC and the BEREC Office will be established by a Decision of the BEREC Office Management Board, and the Participant NRA is committed to paying such financial contribution.
2. The financial contribution to the budget of BEREC Office to be paid by the Participant NRA in order to participate in BEREC, should represent the full cost of its participation in accordance with points I, II and III of this Annex. The amounts will be determined in accordance with point 3 below.
3. The financial contribution to be paid by the Participant NRA should cover the following costs:
 - Costs for reimbursement of travel expenses of the Participant NRA representatives for BEREC meetings, according to the reimbursement rules of BEREC.
 - Administrative costs relating to the above reimbursements for travel expenses, amounting to a maximum of 3 % of the amounts paid as reimbursements for travel expenses.
 - Administrative costs relating to the overall participation of the Participant NRA in the work of BEREC.

The amount of the financial contribution should be determined by the BEREC Office, taking into account, inter alia, the anticipated missions for the upcoming year and the actual missions and reimbursements for the past year(s).

4. The contribution of the Participant NRA should be implemented in accordance with the financial rules of the BEREC Office, adopted pursuant to Article 29 of Regulation (EU) 2018/1971.
5. Travel costs and subsistence costs incurred by representatives and experts of the Participant NRA for the purposes of taking part in the work of BEREC and the BEREC Office, including related meetings, should be reimbursed by the BEREC Office according to the rules stipulated in the BEREC Office Management Board Decision concerning the

reimbursement of travel, subsistence and other expenses incurred in the course of journeys made by persons not employed by the BEREC Office⁹.

6. After the entry into force of these Working Arrangements and at the beginning of each following year, the BEREC Office should send to the Participant NRA a call for funds corresponding to its contribution to the Agency under these Working Arrangements.
7. This contribution should be expressed in EUR and paid into a EUR bank account of the BEREC Office.
8. The Participant NRA should pay its contribution according to the call for funds for its own part within 30 days after the call for funds is sent by the BEREC Office.
9. Any delay in the payment of the contribution should give rise to the payment of interest by the Participant NRA on the outstanding amount as from the due date. The interest rate corresponds to the rate applied by the European Central Bank on the due date for its operations in EUR, increased by 1,5 percentage point.

⁹ Decision of the Management Board of the Agency for Support for BEREC concerning the reimbursement of travel, subsistence and other expenses incurred in the course of journeys made by persons not employed by the BEREC Office and repealing the previous Management Committee Decision No MC/2015/13 of 2 October 2015 (MB/2019/20).